



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

## **Publication of Policies Governing Availability of Information About Agency Adjudicators**

**Committee on Adjudication**

**Proposed Recommendation | December 17, 2020**

### **Proposed Amendments**

**This document displays manager's amendments (with no marginal notes) and additional amendments from the Council and Conference members (with sources shown in the margin).**

**Commented [CMA1]:** Proposed Amendment from Senior Fellow Ronald M. Levin

1 Federal agency officials throughout the country preside over hundreds of thousands of  
2 adjudications each year.<sup>1</sup> As the Administrative Conference has previously observed, litigants,  
3 their lawyers, and other members of the public benefit from having ready online access to  
4 procedural rules, decisions, and other key materials associated with adjudications.<sup>2</sup> They also  
5 benefit from having ready online access to the policies and practices by which agencies appoint  
6 and oversee administrative law judges and other adjudicators. The availability of these policies  
7 and practices helps inform the public about, among other things, any actions agencies have taken  
8 to ensure the impartiality of administrative adjudicators<sup>3</sup> and promotes an understanding of

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<sup>1</sup> See Admin. Conf. of the U.S., Recommendation 2016-2, *Aggregate Agency Adjudication*, 81 Fed. Reg. 40,260, 40,260 (June 21, 2016).

<sup>2</sup> Admin. Conf. of the U.S., Recommendation 2018-5, *Public Availability of Adjudication Rules*, 84 Fed. Reg. 2142 (Feb. 6, 2019); Admin. Conf. of the U.S., Recommendation 2017-1, *Adjudication Materials on Agency Websites*, 82 Fed. Reg. 31,039 (July 5, 2017).

<sup>3</sup> Cf. Admin. Conf. of the U.S., Recommendation 2018-4, *Recusal Rules for Administrative Adjudicators*, 84 Fed. Reg. 2139 (Feb. 6, 2019).



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

9 adjudicators’ constitutional status under the Appointments Clause and other constitutional  
10 provisions.<sup>4</sup>

11 Agencies may benefit from disclosures about agency adjudicators because it allows them  
12 to compare their own policies with those made publicly available by other agencies. Agencies’  
13 proactive disclosures, which may sometimes already be required under the Freedom of  
14 Information Act and the E-Government Act, may also be more cost-effective than agencies’  
15 responding to individual requests for information.<sup>5</sup>

16 Like other recent recommendations regarding adjudicators,<sup>6</sup> this Recommendation  
17 addresses officials who preside over (1) hearings governed by the formal hearing provisions of  
18 the Administrative Procedure Act (APA)<sup>7</sup> and (2) hearings that are not governed by those  
19 provisions but are required by statute, regulation, or executive order. It also addresses officials  
20 (agency heads excluded) who review hearing-level adjudicators’ decisions on appeal. For ease of  
21 reference, this Recommendation refers to the covered adjudicators as either “administrative law  
22 judges” (ALJs) or “administrative judges” (AJs).<sup>8</sup> Agencies may decide to include **on their**  
23 **websites the disclosures identified in** this Recommendation **for about** other adjudicators,  
24 depending on the level of formality of the proceedings over which they preside and whether they  
25 serve as full-time adjudicators. Agencies may also decide to make similar disclosures with  
26 respect to agency heads if their websites do not already provide sufficient information.

<sup>4</sup> See, e.g., *Lucia v. SEC*, 138 S. Ct. 2044 (2018); *Arthrex v. Smith & Nephew*, 941 F.3d 1320 (Fed. Cir. 2019), *cert. granted*, \_\_\_ S. Ct. \_\_\_ (Oct. 13, 2020) (No. 19-1434).

<sup>5</sup> FOIA Improvement Act of 2016, Pub. L. No. 114-185, § 2, 130 Stat. 538, 538 (amending 5 U.S.C. § 552(a)(2)); E-Government Act of 2002, Pub. L. No. 140-347, § 206, 116 Stat. 2899, 2916 (amending 44 U.S.C. § 3501).

<sup>6</sup> See, e.g., Admin. Conf. of the U.S., Recommendation 2018-4, *Recusal Rules for Administrative Adjudicators*, 84 Fed. Reg. 2139 (Feb. 6, 2019).

<sup>7</sup> See 5 U.S.C. §§ 554, 556–557.

<sup>8</sup> The vast majority of ALJs work at the Social Security Administration. AJs work at many different agencies under a variety of titles, including not only “Administrative Judge” but also, by way of example, “Hearing Officer,” “Immigration Judge,” “Veterans Law Judge,” “Administrative Patent Judge,” and “Administrative Appeals Judge.”



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

27 This Recommendation is concerned with policies and practices relating to adjudicators  
28 that agencies should disclose, including those addressing appointment and qualifications;  
29 compensation (including salaries, bonuses, and performance incentives); duties and  
30 responsibilities; supervision and assignment of work; position within agencies' organizational  
31 hierarchies; methods of evaluating performance; limitations on ex parte communications and  
32 other policies ensuring the separation between adjudicative and enforcement functions; recusal  
33 and disqualification; the process for review of adjudications; and discipline and removal.

34 Many of the policies and practices applicable to ALJs governing these matters are already  
35 publicly available because they reside in the APA, Office of Personnel Management rules,  
36 and other legal authorities.<sup>9</sup> Nevertheless, agencies that employ ALJs can take steps to improve  
37 the public's access to this information.

38 ALJs, in any case, make up a small portion of federal adjudicators. There are many more  
39 AJs than ALJs.<sup>10</sup> AJs are regulated by a complex mix of statutory provisions, including civil  
40 service laws, agency rules codified in the *Code of Federal Regulations*, and agency-specific  
41 policies that take a variety of forms. Many types of information about AJs reside in these  
42 sources, but they may be difficult to find.<sup>11</sup> Some relevant sources may not be publicly available,  
43 including internal administrative and personnel manuals, position descriptions, and labor  
44 agreements. This is particularly true with respect to certain kinds of policies, such as those  
45 relating to compensation and performance incentives.<sup>12</sup> Of course, the Administrative  
46 Conference recognizes that some of these agency policies and practices may qualify for an

<sup>9</sup> 5 U.S.C. §§ 554, 557, 3105, 4301, 5372, 7521; 5 C.F.R. part 930, subpart B; Exec. Order No. 13,843, 83 Fed. Reg. 32,755 (July 13, 2018) (issued July 10, 2018).

<sup>10</sup> Kent Barnett et al., Non-ALJ Adjudicators in Federal Agencies: Status, Selection, Oversight, and Removal 1 (Sept. 24, 2018) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/non-alj-adjudicators-federal-agencies-status-selection-oversight-and-removal-1>.

<sup>11</sup> Leigh Anne Schriever, Public Availability of Information About Adjudicators 10 (Nov. 23, 2020) (report to the Admin. Conf. of the U.S.), <https://www.acus.gov/report/final-report-public-availability-information-about-agency-adjudicators>.

<sup>12</sup> *Id.* at 7.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

47 exemption under the Freedom of Information Act,<sup>13</sup> Privacy Act,<sup>14</sup> or other laws and executive-  
48 branch policies.

49 Agency websites are the most helpful location for agencies to make relevant policies and  
50 practices publicly available. Individuals most naturally seek information about administrative  
51 policies and practices on agencies' websites. Agencies can situate information about their  
52 adjudicators in a logical and easily identifiable place on their websites and structure their  
53 websites to synthesize policies in plain language and link to information from many different  
54 sources.<sup>15</sup>

55 This Recommendation encourages agencies to provide clear and readily accessible  
56 descriptions on their websites of the policies governing the appointment and oversight of ALJs  
57 and AJs and to include links to relevant legal documents. How, exactly, they should do so will of  
58 course depend on the specific features of their adjudicative programs and their institutional  
59 needs.

### RECOMMENDATION

- 60 1. Each adjudicative agency should prominently display on its website a short,  
61 straightforward description of all generally applicable policies and practices governing  
62 the appointment and oversight of ALJs and AJs, including, as applicable, those that  
63 address:
- 64 a. Procedures for assessing, selecting, and appointing candidates for adjudicator
  - 65 positions and the legal authority under which **such** appointments are made;
  - 66 b. Placement of adjudicators within agencies' organizational hierarchies;
  - 67 c. Compensation structure and performance incentives, such as bonuses, non-  
68 monetary awards, and promotions;

<sup>13</sup> 5 U.S.C. § 552.

<sup>14</sup> ~~5 U.S.C.~~ *id.* § 552a.

<sup>15</sup> *Cf.* Admin. Conf. of the U.S., Recommendation 2017-3, *Plain Language in Regulatory Drafting*, 82 Fed. Reg. 61,728 (Dec. 29, 2017).

**Commented [CMA2]:** Comment from Senior Fellow Richard J. Pierce, Jr.: The constitutional status of many adjudicators and the continuing validity of the means through which they can be appointed and removed are subject to active litigation in scores of cases that are now pending in circuit courts. Did the committee consider recommending that agencies include a reference to any pending cases in which the continued validity of their means of appointment and/or removal of adjudicators is at stake?



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 69 d. Procedures for assigning cases;
- 70 e. Assignment, if any, of non-adjudicative duties to adjudicators;
- 71 f. Limitations on ex parte communications, including between adjudicators and
- 72 other agency officials, related to the disposition of individual cases, as well as
- 73 other policies ensuring a separation of adjudication and enforcement functions;
- 74 g. Standards for recusal by and disqualification of adjudicators;
- 75 h. Administrative review of adjudicators' decisions;
- 76 i. Supervision of adjudicators by higher-level officials;
- 77 j. Evaluation of adjudicators, including quantitative and qualitative methods for
- 78 appraising adjudicators' performance, such as case-processing goals, if any; and
- 79 k. Discipline and removal of adjudicators.

80 Agencies may choose not to provide access to policies covered by a Freedom of  
81 Information Act exemption or may be required not to disclose information otherwise  
82 protected by law.

- 83 2. On the same webpage as the information described in Paragraph 1 appears, each  
84 adjudicative agency should provide links to key legal documents or, when links are not  
85 available, citations to such documents. These documents may include (a) federal statutes,  
86 including relevant provisions of the APA and other laws applicable to ALJs and AJs; (b)  
87 agency-promulgated rules regarding adjudicators, including Office of Personnel  
88 Management rules applicable to ALJs; (c) publicly available agency-promulgated  
89 guidance documents relating to adjudicators, including manuals, bench books, and other  
90 explanatory materials; ~~and (d) delegations of authority; and (e) position descriptions~~. To  
91 the extent that some policies concerning adjudicators may be a matter of custom, such as  
92 assignment of non-adjudicative duties, each adjudicative agency should consider  
93 documenting those policies in order to make them publicly accessible to the extent  
94 practicable.
- 95 3. The webpage containing the information described in Paragraphs 1 and 2 should present  
96 the materials in a clear, logical, and comprehensive fashion. One possible method of

**Commented [CMA3]:** Proposed Amendment from Senior Fellow Alan B. Morrison



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

97 presenting this information appears in Appendix A. The appendix gives one example for  
98 ALJs and another for AJs.

99 4. If an agency's mission consists exclusively or almost exclusively of conducting  
100 adjudications, the agency should provide a link to the webpage containing the  
101 information described in Paragraphs 1 and 2 on the agency's homepage. If conducting  
102 adjudications is merely one of an agency's functions, the agency should provide a link to  
103 these materials from a location on the website that is both dedicated to adjudicative  
104 materials and logical in terms of a user's likelihood of finding the documents in the  
105 selected location. One example would be an enforcement or adjudication page or the  
106 homepage for the component in which a particular category of adjudicators works.  
107 Citations to agency webpages that currently provide this information in a way that makes  
108 it easy for the public to locate, as well as descriptions of how to find those pages on  
109 agency websites, appear in Appendix B.



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

APPENDIX A

Sample Website Text for Administrative Law Judges

110 **About Our Administrative Law Judges**

111 Administrative Law Judges (ALJs) at [agency name] conduct hearings and decide cases under  
112 [insert name of authorizing act]. They are part of the [agency component in which ALJs are  
113 located], which is directed by [title of office head] and has offices in [cities]. Visit [link to  
114 agency organization chart] to see how [office] relates to other offices at [agency].

115 [Agency name] is committed to ensuring that all hearings and appeals are conducted in a fair and  
116 equitable manner. Parties are entitled to a due process hearing presided over by an impartial,  
117 qualified ALJ. ALJs resolve cases involving [kinds of cases ALJs hear] in a fair, transparent, and  
118 accessible manner. Our ALJs are appointed by [agency official], and are [describe  
119 qualifications]. ALJs are paid according to the [pay scale for ALJs with [link to the scale](#)] scale  
120 (with [cost-of-living adjustments](#) for ALJs' locations) set by another agency, the Office of  
121 Personnel Management.

122 Cases are assigned to ALJs [in each geographic office] in rotation so far as practicable. The ALJ  
123 assigned to your case is responsible for [job duties, like taking evidence, hearing objections,  
124 issuing decisions]. ALJs are required by statute to perform their functions impartially. 5 U.S.C.  
125 § 556(b). To ensure impartiality, they do not take part in investigative or enforcement activities,  
126 nor do they report to officials in the [agency]'s investigative or enforcement components. 5  
127 U.S.C. §§ 554(d) ~~§~~ 3105. The ALJ assigned to your case may not communicate privately about  
128 the facts of your case with other agency officials. [More details on [agency name]'s rules about  
129 communicating with ALJs are available [location of agency-specific ex parte prohibitions]].

130 By law, [agency] does not reward or discipline ALJs for their decisions. [A federal statute](#)  
131 [provides that \[Agency\] may remove, or take certain other disciplinary actions, against does not](#)  
132 [evaluate ALJs' performance and can only discipline or remove an ALJ it employs only for good](#)



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

133 [cause established and determined by the Merit Systems Protection Board on the record after](#)  
134 [opportunity for hearing before the Board, from office if another agency, the Merit Systems](#)  
135 [Protection Board, decides after a hearing that good cause supports doing so.](#) 5 U.S.C. §§ ~~4301,~~  
136 [7521.](#)

Commented [CA4]: Proposed Amendment from Council

137 The agency has adopted rules of recusal [\[link\]](#) that allow a participant to request that the ALJ in  
138 charge of his or her case be disqualified if the participant believes the ALJ cannot fairly and  
139 impartially decide the **cases**.

140 If you are dissatisfied with an ALJ’s decision, you can request reconsideration from the ALJ or  
141 appeal that decision to [\[agency office/official\]](#). Visit [\[link\]](#) for information on appealing an ALJ  
142 decision. [\[Agency office/official\]](#) may also review your case on [\[its/his or her\]](#) own initiative if  
143 there is an issue with the ALJ’s decision.

144 ***For Further Information:***

- 145 • Hiring process: [\[link\]](#)
- 146 • Pay rates: [\[link\]](#)
- 147 • How cases are assigned to ALJs: [\[link\]](#)
- 148 • Communicating with ALJs (ex parte communications): [\[link\]](#)
- 149 • Process for addressing allegations that an ALJ has a conflict of interest (recusal and  
150 disqualification procedures): [\[link\]](#)
- 151 • How to appeal an ALJ decision: [\[link\]](#)
- 152 • Case processing goals: [\[link\]](#)
- 153 • Process for addressing allegations of ALJ misconduct: [\[link\]](#)

154 ***See also:***

- 155 • Statutory provisions governing ALJs: 5 U.S.C. §§ 554, 557, 3105, 4301, 5372, 7521
- 156 • OPM’s regulations governing ALJs: 5 C.F.R. §§ 930.205, ~~930.206~~, 930.207, 930.211
- 157 • MSPB’s regulations governing ALJs: 5 C.F.R. §§ 1201.127–1201.142



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 158
- [Additional legal provisions governing ALJs]
- 159
- Executive Orders pertaining to ALJs: [E.O. 13,843](#) (giving agencies control over the
- 160
- hiring process of ALJs) [add other pertinent EOs]



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Sample Website Text for Administrative Judges

161 *If agencies have different kinds of adjudicators, they should consider providing a separate*  
162 *webpage for each.*

#### 163 **About Our [Insert Adjudicator Title]**

164 [Adjudicator title] at [agency name] [conduct hearings and decide cases/review appeals] under  
165 [name of authorizing act(s)]. They are part of the [agency component in which adjudicators are  
166 located], which is directed by [title of office head] and has offices in [cities]. Visit [link to  
167 agency organization chart] to see how [office] relates to other offices at [agency].

168 [Agency name] is committed to ensuring that all hearings and appeals are conducted in a fair and  
169 equitable manner. Parties are entitled to a due process hearing presided over by an impartial,  
170 qualified [adjudicator title]. [Adjudicator title] resolve cases involving [kinds of cases] in a fair,  
171 transparent, and accessible manner. Our [adjudicator title] are appointed pursuant to [authorizing  
172 statute] by [agency official] [for terms of [number of years] years], and are [describe  
173 qualifications]. [Adjudicator title] are paid according to the [pay scale for adjudicator with link to  
174 the scale] scale set [by another agency, the Office of Personnel Management/by [agency title]],  
175 and they [are/are not] eligible to receive bonuses or other performance incentives.

176 Cases are [describe how cases are assigned]. The [adjudicator title] assigned to your case is  
177 responsible for [job duties, like taking evidence, hearing objections, issuing decisions].

178 [Description of policies (if any exist) that ensure the agency component or adjudicators remain  
179 independent from investigative or enforcement activities]. [Description of rules about ex parte  
180 communications, if any exist].

181 [Agency official or body] is responsible for evaluating the quality of [adjudicator title] decisions,  
182 and [agency official or body] conducts performance reviews of [adjudicator title]. [Agency  
183 official/entity from another agency] may remove the [adjudicator title] or [agency official or  
184 body/other entity] may discipline the [adjudicator title] by [kinds of discipline] when warranted.



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

185 The agency has adopted rules of recusal [\[link\]](#) that allow a participant to request that the  
186 [\[adjudicator title\]](#) in charge [of](#) his or her case be disqualified if the participant believes the  
187 [\[adjudicator title\]](#) cannot fairly and impartially decide the case.

188 If you are dissatisfied with an [\[adjudicator title\]](#) decision, you can request reconsideration from  
189 the [\[adjudicator title\]](#) or appeal that decision to [\[agency office/official\]](#). Visit [\[link\]](#) for  
190 information on appealing an [\[adjudicator title\]](#) decision. [\[Agency office/official\]](#) may also review  
191 your case on [\[its/his or her\]](#) own initiative if there is an issue with the [\[adjudicator title\]](#)'s  
192 decision.

### 193 ***For Further Information:***

- 194 • Hiring process: [\[link\]](#)
- 195 • Pay rates: [\[link\]](#)
- 196 • Bonuses and performance incentives: [\[link\]](#)
- 197 • How cases are assigned to [\[adjudicator title\]](#): [\[link\]](#)
- 198 • Communicating with [\[adjudicator title\]](#) (ex parte communications): [\[link\]](#)
- 199 • Process for addressing allegations that an [\[adjudicator title\]](#) has a conflict of interest  
200 (recusal and disqualification procedures): [\[link\]](#)
- 201 • How to appeal an [\[adjudicator title\]](#) decision: [\[link\]](#)
- 202 • Case processing goals: [\[link\]](#)
- 203 • Process for addressing allegations of [\[adjudicator title\]](#) misconduct: [\[link\]](#)

### 204 ***See also:***

- 205 • Statutory provisions regarding [\[adjudicator title\]](#), including the appointment authority:  
206 [\[statutory citations\]](#)
- 207 • Agency regulations governing [\[adjudicator title\]](#): [\[C.F.R. provisions\]](#)



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

APPENDIX B

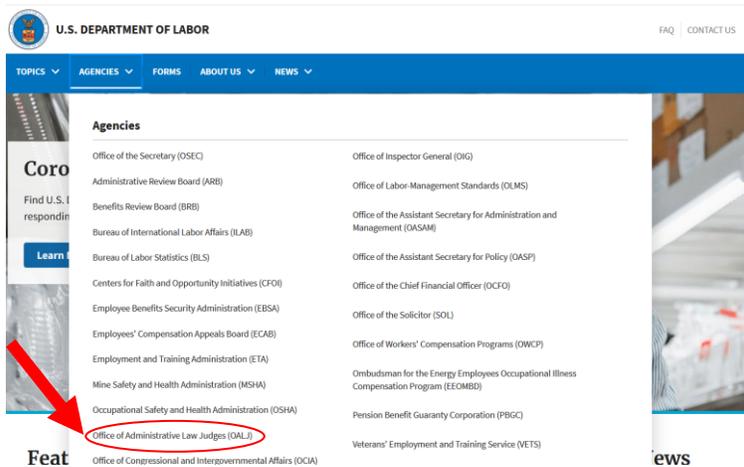
208 Example 1 – Department of Labor’s Office of Administrative Law Judges

209 The website of the Office of Administrative Law Judges provides an example of how agencies  
210 can intuitively place information about adjudicators on their websites in plain-language text with  
211 citations. It is easy to find because a link to it is placed on the home page for the Office of  
212 Administrative Law Judges.

213 Citation: *About the Office of Administrative Law Judges*, U.S. DEP’T OF LABOR,  
214 <https://www.dol.gov/agencies/oalj/about/ALJMISSN> (last visited Nov. 9, 2020).

215 How to Find:

- 216 1. Go to the Department of Labor Website ([www.dol.gov](http://www.dol.gov)) and click on the “Agencies Tab,”  
217 which should bring up a drop-down menu. Click on “Office of Administrative Law  
218 Judges (OALJ).”



219



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 220 2. Scroll down to the bottom of the OALJ page and click on “About OALJ.”

221

- 222 3. The “About the Office of Administrative Law Judges” page includes information about  
 223 the locations of administrative law judges (ALJs), the authority under which they are  
 224 appointed, and the kinds of cases heard by ALJs.

### About the Office of Administrative Law Judges

The Office of Administrative Law Judges (OALJ) is the administrative trial court for the United States Department of Labor. OALJ conducts hearings nationwide. The Department of Labor has the third largest administrative law judge (ALJ) office in the Federal government. OALJ is headquartered in Washington, DC, and has judges and staff located in eight district offices. ALJs are appointed under the U.S. Const. art. II, § 2, cl. 2 and the Administrative Procedure Act, 5 U.S.C. § 3105.

#### Mission

OALJ's mission is to provide a neutral forum to resolve labor-related administrative disputes before the Department of Labor in a fair, transparent and accessible manner, and to promptly issue sound decisions correct in law and fact.

Department of Labor ALJs adjudicate complaints and claims in a wide variety of cases. Cases where individuals seek benefits under the Black Lung Benefits Act, the Longshore and Harbor Workers' Compensation Act and the Defense Base Act constitute the largest part of the office's workload. ALJs also hear and decide cases arising from over 80 other labor-related statutes, Executive Orders, and regulations, including such diverse subjects as: whistleblower complaints involving corporate fraud and violations of transportation, environmental and food safety statutes; alien labor certifications; actions involving the working conditions of migrant farm laborers; grants administration relating to preparation of workers and job seekers to attain needed skills and training; prohibition of workplace discrimination by government contractors; minimum wage disputes; child labor violations; mine safety variances; OSHA formal rulemaking proceedings; federal contract disputes; civil fraud in federal programs; certain recordkeeping required by ERISA; and standards of conduct in union elections.

225



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

226 Example 2 – Department of Health and Human Service’s Office of Medicare Hearings and  
227 Appeals

228 The website of the Office of Medicare Hearings and Appeals shows a clear and intuitive way  
229 agencies can organize information about adjudicators. The link to the “About OMHA” page is  
230 easy to find from the main page for the Office of Medicare Hearings and Appeals, which  
231 contains a link to it.

232 Citation: *About OMHA*, U.S. DEP’T OF HEALTH & HUMAN SERVS.,  
233 <https://www.hhs.gov/about/agencies/omha/about/index.html> (last visited Nov. 9, 2020).

234 How to Find:

- 235 1. Go to the main page for OMHA (<https://www.hhs.gov/about/agencies/omha/index.html>)  
236 and click on “About OMHA” on the left side.

The screenshot shows the top navigation bar with links for 'About HHS', 'Programs & Services', 'Grants & Contracts', and 'Laws & Regulations'. Below this is a breadcrumb trail: 'Home > About > Agencies > Office of Medicare Hearings & Appeals (OMHA)'. On the left side, there is a vertical menu with the following items: 'Office of Medicare Hearings and Appeals (OMHA)', 'The Appeals Process', 'Filing an Appeal', 'About OMHA' (circled in red with a red arrow pointing to it), 'Contact OMHA', and 'Work for Us'. The main content area is titled 'Office of Medicare Hearings and Appeals (OMHA)' and contains a paragraph describing the agency's role in administering the nationwide Administrative Law Judge (ALJ) hearing program. Below this is a link: 'HHS issues procedures for selecting and appointing Administrative Law Judges (ALJs)'. At the bottom, there is a section titled 'OMHA OPERATIONS DURING THE COVID-19 PANDEMIC' with a detailed paragraph about the agency's operations during the pandemic.

237



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 238 2. The “About OMHA” page includes information about what cases ALJs at OMHA hear  
 239 and the organization of the agency.

[Office of Medicare Hearings and Appeals \(OMHA\)](#)  
[The Appeals Process](#)  
[Filing an Appeal](#)  
**[About OMHA](#)**  
[Organizational Chart](#)  
[Leadership](#)  
[Workload Information and Statistics](#)  
[Health Data Sets](#)  
[Special Initiatives](#)  
[Settlement Conference Facilitation](#)  
[Statistical Sampling](#)  
[Appellant Forums](#)  
[Contact OMHA](#)  
[Work for Us](#)

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### About OMHA

The Office of Medicare Hearings and Appeals (OMHA) is responsible for [Level 3 of the Medicare claims appeal process](#); certain [Medicare entitlement appeals](#); [Part B](#) and Part D premium appeals.

OMHA was created by the Medicare Modernization Act of 2003 to simplify the appeals process and make it more efficient. During an appeal, an OMHA Administrative Law Judge or attorney adjudicator conducts a new (“de novo”) review of an appellant’s case and issues a decision based on the facts and the law.

The Chief Administrative Law Judge leads the entire agency, which consists of six field offices and a headquarters office. Each field office includes many Administrative Law Judges and attorney adjudicators who are overseen by an Associate Chief Administrative Law Judge. Appeals are assigned to these adjudicators by a Centralized Docketing Division in accordance with standardized procedures.

[Contact information for each OMHA field office is available.](#)

### Operating Plan

Office of Medicare Hearings and Appeals (OMHA)

Operating Plan for FY 2015 - 2016 (Dollars in Millions)

Activities	FY 2015	FY 2016
OMHA	87.381	107.381
OMHA Total	87.381	107.381

**Organizational Chart**

See how our office is structured and find information on key personnel.

**Workload Information and Statistics**

Find data about OMHA’s current workload, including decision statistics and average processing time.

**Health Data Sets**

Find data sets on receipts by fiscal year, appeal category, procedure, and state.

**Special Initiatives**

Learn how OMHA is working to improve the Medicare appeals process through pilot programs and other special initiatives.

240



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### 241 *Example 3 – Internal Revenue Service’s Independent Office of Appeals*

242 The website of the Independent Office of Appeals presents an example of how agencies can use  
243 website text to reassure the public about their adjudicators’ independence and impartiality in  
244 plain language. The IRS website has a link to the Independent Office of Appeals webpage on its  
245 main page. The first sentence of the Office’s homepage includes a hyperlink to a page containing  
246 more information about its adjudications, including details about ex parte communications and  
247 the separation of adjudicative functions from other agency functions.

248 Citation: *Appeals – An Independent Organization*, I.R.S., [https://www.irs.gov/appeals/appeals-](https://www.irs.gov/appeals/appeals-in-independent-organization)  
249 [in-independent-organization](https://www.irs.gov/appeals/appeals-in-independent-organization) (last visited Nov. 9, 2020).

250 How to Find:

- 251 1. Go to the IRS’s home page ([www.irs.gov](http://www.irs.gov)) and scroll down to the bottom. Click on  
252 “Independent Office of Appeals.”

The screenshot shows the IRS website's footer navigation menu. The menu is organized into five columns: OUR AGENCY, KNOW YOUR RIGHTS, RESOLVE AN ISSUE, OTHER LANGUAGES, and RELATED SITES. The 'RESOLVE AN ISSUE' column contains several links, with 'Independent Office of Appeals' circled in red and a red arrow pointing to it. Other links in this column include 'Respond to a Notice', 'Identity Theft Protection', 'Report Phishing', and 'Tax Fraud & Abuse'. The 'OTHER LANGUAGES' column lists 'Español', '中文 (简体)', '中文 (繁體)', '한국어', and 'Русский'. The 'RELATED SITES' column includes 'U.S. Treasury', 'Treasury Inspector General for Tax Administration', and 'USA.gov'. A promotional banner for the '10th Anniversary of the National Economic Impact Payment' is visible at the top of the page, with a search bar and navigation links above it.

OUR AGENCY	KNOW YOUR RIGHTS	RESOLVE AN ISSUE	OTHER LANGUAGES	RELATED SITES
About IRS	Taxpayer Bill of Rights	Respond to a Notice	Español	U.S. Treasury
Work at IRS	Taxpayer Advocate Service	Independent Office of Appeals	中文 (简体)	Treasury Inspector General for Tax Administration
Help	Civil Rights	Identity Theft Protection	中文 (繁體)	USA.gov
Contact Your Local Office	Freedom of Information Act	Report Phishing	한국어	
Tax Stats, Facts & Figures	No Fear Act	Tax Fraud & Abuse	Русский	

253



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- 254 2. Click on “Independent Office of Appeals” in the first sentence on the webpage.

### Appeals

English | Español | 中文(简体) | 中文(繁體) | 한국어 | Русский | Tiếng Việt | Kreyòl ayisyen

**Interactive Tax Assistant**

**Tools**

**Report Phishing**

**Fraud/Scams**

**Notices and Letters**

**Appeals**

Considering an Appeal

Requesting an Appeal

What to Expect

**Frequently Asked Questions**

**Accessibility**

**Contact an International IRS Office**

**Tax Topics**

**Other Languages**

**Coronavirus (COVID-19) Impact on Appeals Cases**

We appreciate your patience and understanding during this time. If you have questions about your case, contact your assigned Appeals Office by phone. Please see our latest update on [In-person conferences](#).

The IRS **Independent Office of Appeals** is here to resolve disputes, without litigation, in a way that is **fair and impartial to the government and to you**.

**About Your Appeal**

- Considering an Appeal
- Requesting an Appeal
- What to Expect
- Appeals Functions & Contacts [PDF](#)

**Special Case Procedures**

- Innocent Spouse
- Mediation Programs
- Rejected Offers in Compromise
- Penalty Appeals
- Art Appraisal Services

**Forms, Videos and Podcasts**

- Online videos and podcasts of the Appeals process
- Forms and publications about your appeal rights

**Other Items of Interest**

- ATCL Conferencing Initiative completed May 1, 2020 [PDF](#)
- Virtual Face-to-Face Conferences (Webex)
- Independent Office of



- 255
- 256 3. The “Appeals – An Independent Organization” page includes information about the
- 257 agency’s relationship with other agency components and provides an explanation about
- 258 the rules around ex parte communications.

### Appeals – An Independent Organization

English | Español | 中文(简体) | 中文(繁體) | 한국어 | Русский | Tiếng Việt

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Requesting an Appeal

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**Accessibility**

**Contact an International IRS Office**

**Tax Topics**

**Other Languages**

Appeals is separate and independent from the IRS Examination and Collection functions that make tax assessments and initiate collection actions. Our mission is to resolve tax controversies:

- Without litigation
- On a basis which is fair and impartial to both the Government and you, and
- In a manner that will enhance voluntary compliance and your confidence in the integrity and efficiency of the Service

Independence and impartiality are our most important core values, because our **independence protects our ability to make objective and impartial decisions**.

We safeguard the fairness of our tax system. You aren't required to request an appeal before going to court, but the appeals process is less formal, less costly and isn't subject to complex rules of evidence or procedure. In addition, you don't give up the right to go court by coming to Appeals.

We also offer services through our mediation programs. These programs are designed to help you resolve your dispute at the earliest possible stage in the audit or collection process.

**What Ex Parte Means to You**

In judicial proceedings, the term “ex parte” refers to a one-sided or partisan point of view received on behalf of or from one side or party only. Within the IRS, an ex parte communication is a communication between an Appeals employee and employees of other IRS functions—without you or your representative being given an opportunity to participate in the communication. Reinforcing our independence, certain ex parte communications are prohibited. For additional guidance related to the prohibition on ex parte communications, see [Revenue Procedure 2012-18](#).

**Additional Information about Appeals**

- If you have a dispute with the IRS and are thinking about appealing their decision, go to [Considering an Appeal](#) for information on whether Appeals may be the place for you.
- If you've decided to request an appeal, go to [Requesting an Appeal](#) to learn more about the process.
- For information on our policies, please refer to the [Fact Sheet - IRS Independent Office of Appeals](#) [PDF](#) and the related [Frequently Asked Questions](#) [PDF](#).
- For information on the structure of Appeals, refer to [Appeals Functions & Contacts](#) [PDF](#).



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

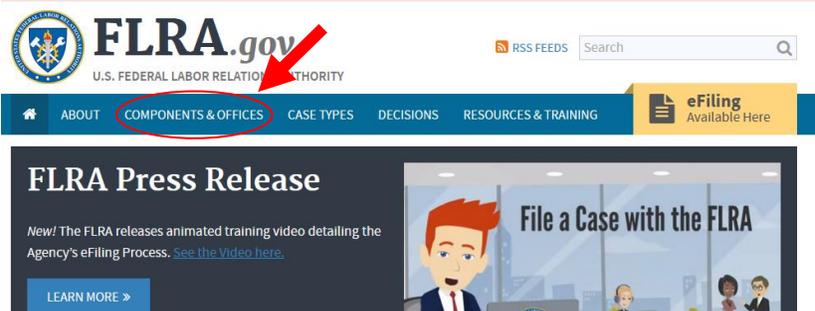
260 *Example 4 – Federal Labor Relations Authority*

261 The website of the Federal Labor Relations Authority provides a good example of how agencies  
262 can create an easily -located page that is accessible from the main page and that provides  
263 information about the appointment and job duties of the adjudicators.

264 Citation: *Office of Administrative Law Judges*, FED. LABOR RELATIONS AUTH.,  
265 <https://www.flra.gov/components-offices/offices/office-administrative-law-judges> (last visited  
266 Nov. 9, 2020).

267 How to Find:

268 1. Go to the FLRA website ([www.flra.gov](http://www.flra.gov)) and click on “Components & Offices.”



269



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

270 2. Click on “Office of Administrative Law Judges.”

### Components & Offices

The FLRA is organized into three statutory components – the Authority, the Office of the General Counsel (OGC), and the Federal Service Impasses Panel (FSIP) – each with unique adjudicative or prosecutorial roles. The agency also provides full program and staff support to two other organizations – the Foreign Service Impasse Disputes Panel and the Foreign Service Labor Relations Board.

#### In This Section

##### COMPONENTS

The Authority  
Office of the General Counsel  
The Federal Service Impasses Panel

##### OFFICES

[Office of Administrative Law Judges](#)  
[Office of Case Intake and Publication](#)  
[Office of the Executive Director](#)  
[Office of Inspector General](#)  
[Office of Legislative Affairs and Program Planning](#)  
[Office of the Solicitor](#)

#### FEATURED TOPICS

##### Is the FLRA hiring?

Find a listing of all of the FLRA's current job openings.

##### Contact Us

Find a listing of FLRA contacts that you can call for more information.

271

272 3. The “Office of Administrative Law Judges” page includes information about office  
273 location, the authority for the appointment of ALJs, and descriptions of the kinds of cases  
274 ALJs hear.

## Office of Administrative Law Judges

### What we do

FLRA Administrative Law Judges conduct hearings and issue recommended decisions on cases involving alleged unfair labor practices. Administrative Law Judges also render recommended decisions involving applications for attorney fees filed under the Back Pay Act and the Equal Access to Justice Act.

The Authority appoints Administrative Law Judges under [§ 7105\(d\)](#) of the Federal Service Labor-Management Relations Statute.

To learn more, please see our page on [procedures](#) relevant to cases before Administrative Law Judges, and our page on the [Settlement Judge Program](#).

### Contact information

**Office of Administrative Law Judges**  
Federal Labor Relations Authority  
1400 K Street, NW  
Washington, DC 20424  
Phone: (202) 218-7950  
Fax: (202) 482-6629

#### IN THIS SECTION

##### [Office of Administrative Law Judges](#)

[Settlement Judge Program](#)

[Overview of Procedures](#)

[Office of Case Intake and Publication](#)

[Office of the Executive Director](#)

[Office of Inspector General](#)

[Office of Legislative Affairs and Program Planning](#)

[Office of the Solicitor](#)

#### Resources

[Authority Decisions](#)

[Administrative Law Judge Decisions](#)

275